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HAROLD VILLETT

IN THE
Supreme Court of the United States
OCTOBER TERM, A. D. 1952.

No. ~~413~~ 8-4

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Appellants,
vs.

C. MELVIN SHARPE, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

**BRIEF OF THE AMERICAN FEDERATION OF
TEACHERS AS AMICUS CURIAE.**

JOHN LIGTENBERG,
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Teachers, Amicus Curiae.*

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**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE.**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

The undersigned as counsel for and on behalf of American Federation of Teachers, respectfully moves this Honorable Court for leave to file the accompanying brief as Amicus Curiae. Consent has been given by counsel for appellants and appellees. The letters giving such consent accompany this brief.

The American Federation of Teachers is an organization of more than 350 locals of 60,000 teachers throughout the country, committed to a policy of "Democracy in Education—Education for Democracy". Its membership con-

sists chiefly of classroom teachers who do the actual work of teaching the children in the nation's schools.

In its own affairs it is committed to a practice of complete equality and non-segregation between teachers of every race. Its Constitution provides:

"Section 11 (of Article III). No discrimination shall ever be shown toward individual members, or applicants for membership because of race * * *."

It has worked unceasingly throughout its history, and with greater intensity in recent years, for the abolition of all forms of discrimination and segregation in education based on racial differences.

Its members, as shown by the proceedings of its national conventions, have repeatedly asserted a fixed opinion that segregated school systems are a basic violation of the rights guaranteed by the Constitution of the United States.

JOHN LIGTENBERG,

*Counsel for the American Federation
of Teachers.*

SELMA M. BORCHARDT,

Of Counsel.

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**BRIEF OF THE AMERICAN FEDERATION OF
TEACHERS AS AMICUS CURIAE.**

The American Federation of Teachers submits this brief as amicus curiae in view of the great importance to democracy and the cause of education of the constitutional issues involved in this case.

Through the daily experience of its members the American Federation of Teachers is cognizant of the harm done to education by the practice of segregated schools.

Opinions Below.**Statutes Involved.**

The opinions below and the statutes involved are set out in the brief of the appellants.

Question Presented.

The question presented here is whether or not the Board of Education of the District of Columbia deprives the Negro school children, including the appellants, of rights secured by the Constitution and laws of the United States, including the Fifth Amendment of the Constitution of the United States and the Federal Civil Rights Act.

Statement.

This is a class action in which the plaintiffs seek an injunction restraining the Board of Education of the District of Columbia, its members and employees, from operating a system of schools in the District of Columbia in which separate schools are operated for white and colored children and mandating them to admit the minor appellants and other Negro children similarly situated to the public schools of the District of Columbia without discrimination based on race or color. A motion to dismiss was filed by the defendants and the case was dismissed by the District Court on the ground that the complaint failed to state a cause of action upon which relief could be granted. The United States Court of Appeals for the District of Columbia upheld this decision and the case is before the United States Supreme Court for review.

The substantial issue is whether segregation of children in the grade and high schools of the District of Columbia

is *per se* a denial of "due process" and the equal protection of the laws and of the rights of the plaintiffs and others similarly situated under the Federal Civil Rights Statute.

Summary of Argument.

In this brief amicus curiae the American Federation of Teachers will argue that segregation in the schools violates the basic principles of the educational process; that Negro children forced by the authorities of the District of Columbia to attend segregated schools are, by virtue of such segregation denied the protection of the Fifth Amendment of the Constitution and of Federal statutes enacted pursuant thereto.

A R G U M E N T .

I.

A segregated school system is harmful to all the races involved. Its inconsistency is detrimental to the educational process as a whole and materially affects the opportunities of the minority group.

The American Federation of Teachers, on behalf of its 60,000 members, submits that segregation in public schools inevitably results in inferior education for all.

This organization, composed almost entirely of classroom teachers, is cognizant of the loss of human values and the waste of the resources of the spirit that results from such a system.

In a broad sense the consequence is a denial of the highest ends of education, both to the dominant and minority groups. In an atmosphere of inequality, it is no more feasible to teach the principles of our American way to the white children than to the Negroes. The apparent insincerity of such teaching is as destructive to the moral sense of the majority as to the sense of justice of the minority. The fundamental morality of each is undermined.

To the conscientious teacher the incongruity of such a system presents a barrier to the teaching of basic values of truth, beauty and justice. For if justice is relative and depends on race or color how can we teach that ours is a government of laws and not of men? And if justice is relative and considers race and color then a different flag waves over a colored school and the pledge to the flag must

mean different things. The one nation is really not one nation but at least two, it is found to be divisible, and liberty, like justice, has two meanings.

These are the deep rooted evils that teachers see in a segregated school system. The system results in inferior educational facilities for the Negro and deprives him of an important element of the educational process. The damage to him is material both as to quantity and quality.

The damage to the white child is more subtle. In a moral and spiritual sense he is corrupted, while the other is corroded. The material advantage is purchased at the cost of an uneasy spirit.

And in the last analysis, the teacher is caught in a maze of contradiction from which there is no escape save by a destruction of the system. The classroom teacher sees this case as the means of cleansing the fountainhead of our national ideals.

We in America rightly put our hope of future greatness in our schools. We see in constantly improving education our hope for civil and political righteousness. In our quest it is well that we look again and again

"unto the rock whence we are hewn, and to the hole of the pit whence we are dug."

II.

Segregation in public schools inevitably results in inferior educational opportunities for Negroes.

If we restrict our attention to the standards of educational opportunity that can be expressed in dollars expended and facilities that can be measured and counted, we find a vast disparity between white and colored schools.

Commenting on the study of Dr. John Norton and Dr. Eugene Lawler—Public School Expenditures (1944) W. Harden Hughes states:

"The contrasts in support of white and Negro schools are appalling . . . the median expenditure per standard classroom unit in schools for white children is \$1,160 as compared with \$476 for Negro children. Only 2.56% of class rooms in the white schools fall below the \$500 cost level while 52.59% of the class rooms for Negro children are below this level."¹

"The state supported institutions of higher learning for Negroes are far inferior" states Charles S. Mangrum, Jr., "to their sister institutions for whites. Most of the inequalities which have been noted herein with respect to the public schools for whites and Negroes are also present in the Negro normal and technical schools. . . . There is hardly one among them that could compare with any good white college in the same area."²

Several recent studies,³ as well as many previous ones, all indicate the great disparity between the educational opportunities afforded white youth and those offered to the Negro youth in the states where a segregated and discriminatory system of education prevails.

So obvious are the inequalities that in Volume 1 of the National Survey of the Higher Education of Negroes we find this statement: "No one with a knowledge of the facts believes that Negroes enjoy all the privileges which American democracy expressly provides for the citizens of the

¹ Negro Year Book, Tuskegee Institute 1947. "The Negro and Education." W. Harden Hughes, p. 56.

² The Legal Status of the Negro (p. 134), Charles S. Mangrum, Jr., Chapel Hill University of N. C. Press, 1940.

See Public School Expenditures, Dr. John Norton and Dr. Eugene S. Lawler, American Council on Education, 1944.

³ The Black & White of Rejections for Military Service, American Teachers Assn. Studies, ATA Montgomery, Ala., 1944; Public School Expenditures in the U. S., Dr. John K. Norton and Dr. Eugene S. Lawler; American Council on Education, Wash., D. C., 1944; Journal of Negro Education, Summer 1947.

United States and even for those aliens of the white race who reside among us. The question goes much deeper than the Negro citizens' *legal right to equal educational opportunity*. The question is whether American democracy and what we like to call the American way of life, can stand the strain of perpetuating an undemocratic situation; and whether the nation can bear the *social cost of utilizing only a fraction of the potential contribution of so large a portion of the American population.*⁴

The Constitution is a living instrument, and a "separate but equal" doctrine based upon antiquated considerations, should not, at this time, and in this advanced era, be permitted to perpetuate a situation which denies full equality to Negroes in the pursuit of education.

III.

Segregation in public schools deprives the Negro student of an important element of the education process. Where this occurs under the color of law, he is thereby deprived of life, liberty, or property without due process of law in violation of the Fifth Amendment.

The practice of segregation in the field of education is a denial of education itself. Education means more than the physical school room and the books it contains, and the teacher who instructs. It includes the learning that comes from free and full association with other students in the school. To restrict that association is to deny full and equal opportunities in the learning process. To restrict that association is to deny the constitutional guarantees.

⁴ Socio-Economic Approach to Educational Problems, Misc. No. 6, Vol. 1, p. 1, Federal Security Agency, U. S. Office of Education, Wash., 1942.

Psychologists show us that learning is an emotional as well as an intellectual process; that it is social as well as individual, and is best secured in an environment which encourages and stimulates the best effort of the individual and holds out the hope that this best effort will be accepted and used by society.

In every situation there is the inter-relation of the individual to his group—which is one that increases with his maturity. First it is the family, then the local community, then the state, the nation, and finally the entire world. At no stage of development should any barriers be erected to prevent the individual from moving from a narrower group to a larger one, particularly barriers on race. As Lewin states:

“The group to which an individual belongs is the ground on which he stands, which gives or denies him social status, gives or denies him security and help. The firmness or weakness of this ground might not be consciously perceived, just as the firmness of the physical ground on which we tread is not always thought of. Dynamically, however, the firmness and clearness of this ground determine what the *individual wishes to do, what he can do, and how he will do it*. This is equally true of the social ground as of the physical.”⁵

If education can be made available to all so that each may develop to the fullest and give his contribution to society, we will find a peaceful way—rather than one of human destruction and tragedy—to bring freedom and justice to peoples.

The American Federation of Teachers believes that segregated and discriminatory education is undemocratic and contrary both to sound educational development as

⁵ Kurt Lewin, “Resolving Social Conflict,” p. 174, Harper & Bros., 1948.

well as to the basic law of the land—the United States Constitution. We subscribe to the principle that democratic education provides a total environment which will enable the individual to develop to his capacity, physically, emotionally, intellectually and spiritually.

For such training to be fully effective, it is essential that each individual participate, without barriers of race, creed, or national origin, as a full fledged member in the home, the community, the state and the nation.

Accordingly, any restriction, particularly in the form of segregated and discriminatory schooling, which prevents the interplay of ideas, personalities, information and attitudes, impedes a democratic education and ultimately prevents a working democracy.

I V.

The segregated school system operated by the Board of Education of the District of Columbia violates the due process clause of the Fifth Amendment.

The Fourteenth Amendment made Negroes citizens of the United States and was intended to protect them fully in the exercise of their rights and privileges. To make sure that this intent was fully known, Congress refused to readmit Southern States or seat their representatives until the states accepted the Fourteenth Amendment.

In construing the Fourteenth Amendment the Supreme Court has established a rule of law that discrimination based on race or color violates the constitutional guarantee.

The court has applied this rule in the field of higher education in two recent cases. *Sweatt v. Painter*, 339 U. S. 629; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637.

The court has applied this rule with equal firmness in other fields, and has made no distinction between cases arising under the Fifth and Fourteenth Amendments. The national policy has been applied to racial discrimination by both State and Federal agencies. (Cases cited in Appellants' Brief, pp. 6-8.)

The opportunity, the duty, and the stern necessity of a consistent application of the rules are dramatically present in this case. Here the Court may become the schoolmaster and teach the lesson that others have failed to teach. The most important place to teach the lesson is in the nation's schools, and if the lesson is learned there it will be learned everywhere.

In *McLaurin v. Oklahoma State Regents*, 339 U. S. 637, 70 S. Ct. Rep. 851 the court held that the requirements of state law that the instruction of a Negro graduate student in the University of Oklahoma "upon a segregated basis" deprived the appellant in that case of his personal and present right to the equal protection of the laws.

There is no reason in experience for applying a different logic to children in grade and high schools. As the court there said, Our society grows increasingly complex and our need for trained leaders increases correspondingly.

We cannot give separate training to two segments of society and then expect that some magic will merge the individual from these segments into equal citizens having equal opportunities.

It is a mockery to say that those who aspire to teach and lead must have equal opportunity regardless of race, and still condemn those they are to teach and lead to inequality.

Ninety years of segregated schools demand the historical judgment that separate facilities are inevitably unequal and are not the way to equal opportunity.

In the segregated school system the growing citizen never has the chance to show his equal ability; he never has the

"opportunity to secure acceptance by his fellow students on his own merits." *McLaurin v. Oklahoma State Regents*, 339 U. S. 637, 641.

He must wait until he has finished what schooling he gets before he enters the competition. For him "the personal and present right to the equal protection of the laws" is of as great practical importance as for the graduate student.

The constitutional guarantee is not for law students and post-graduates alone. It is meaningless if it does not apply to all.

Conclusion.

Segregation of Negroes in public schools in any of our States or Territories inevitably results in depriving Negroes of educational opportunities provided by those States or Territories for white citizens. Negroes in such States are thereby denied the equal protection of the laws and are deprived of valuable rights without due process of law. This Court should end these violations of the constitutional mandate by reversing the judgment in this case and granting the appellants the relief they pray for.

Respectfully submitted,

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